



Felipe Mendoza

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**BY E-MAIL AND U.S. FIRST CLASS MAIL**

Records, FOIA, and Privacy Branch  
Office of Environmental Information  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue (2822T), NW  
Washington, DC 20460  
hq.foia@epa.gov

Reference: BP America, Inc. Freedom of Information Act Request

Dear Freedom of Information Officer:

I am writing on behalf of BP America, Inc. ("BP") to request certain records pursuant to the Freedom of Information Act, 5 U.S.C. § 552, EPA regulations, 40 C.F.R. § 2.100 *et seq.*, and the Clean Air Act, 42 U.S.C. § 7542(c).

I request a copy of all records<sup>1</sup>, regardless of the form or format of such records, relating to<sup>2</sup> small refinery exemptions granted in whole or in part under the Renewable Fuel Standard (RFS) program, 42 U.S.C. § 7545(o)(9), for renewable volume obligations ("RVOs") in 2016, 2017, 2018, and/or 2019, including specifically:<sup>3</sup>

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<sup>1</sup> The word "record" means, without limitation and by way of description: (a) all printed materials of every kind whatsoever; (b) all handwritten materials of every kind whatsoever; (c) all materials in electronic media regardless of the forms of such media; (d) all drafts of subject documents; (e) all documents referenced in subject documents including those noted as exhibits and attachments, as well as those referenced in the bodies of subject documents or in footnotes to subject documents; (f) all documents, otherwise identified, but containing marginal or other annotations handwritten or otherwise; (g) all documents in the form of transcripts of meetings and telephone conversations and memoranda of such meetings and telephone conversations whether printed or handwritten; (h) all three-dimensional, visual, or other graphic materials; (i) to the extent not covered by the definitions in (a)-(h), all materials generated by or received by any government employee, consultant, or other person having any relationship to the government.

<sup>2</sup> The phrase "records relating to" means any and all records discussing, analyzing or containing any information relating to the subject matter identified in this request.

<sup>3</sup> The vast majority of the information sought in this request should be properly subject to public release, given that this request is limited to material relating to instances where EPA has made a final determination to grant a small refinery exemption for one or more RVO years. 81 Fed. Reg. 80,828, 80,909 (Nov. 16, 2016) (explaining that the release of basic information and government generated data related to small refinery exemptions is required by FOIA); *see also* 5 U.S.C. § 552(a)(2)(A) (agency must



1. Any policy, guidance, interpretations, staff manuals, or similar documents discussing the small refinery exemption that is not already publicly available online;
2. EPA's final decision document or opinion granting the small refinery exemption (in whole or in part) for any small refinery with respect to RVOs in 2016, 2017, 2018, and/or 2019;
3. The identity (including geographic location) of refineries that sought exemptions from their 2016, 2017, 2018, and/or 2019 RVOs;
4. The identity (including geographic location) of refineries that were granted exemptions (in whole or in part) from their 2016, 2017, 2018, and/or 2019 RVOs;
5. For each refinery which received an exemption (in whole or in part) from its 2016, 2017, 2018, and/or 2019 RVOs:
  - a. EPA's basis/rationale for granting or denying the exemption, and any analysis thereof;
  - b. The duration, scope, and nature of the granted exemption;
  - c. The date EPA informed the refinery it had been granted an exemption;
  - d. The manner in which the refinery demonstrated "disproportionate economic hardship";
  - e. The manner in which the refinery demonstrated that it made its best efforts to comply with its RVO;
  - f. The date the refinery anticipated compliance with its RVO could reasonably be achieved, as required by 40 C.F.R. § 80.1441(e)(2)(i);
  - g. Whether and the extent to which the Department of Energy recommended the waiver be granted, either in whole or in part;
  - h. Information on whether the refinery had received an exemption for its 2013, 2014, and/or 2015 RVO or for the RVO year immediately prior to EPA's grant of an exemption.
6. Any communications or correspondence with the Department of Energy about petitions for small refinery exemptions for the 2016, 2017, 2018, and/or 2019 RVOs, including:
  - a. Any consultation with the Department of Energy pursuant to 42 U.S.C. § 7545(o)(9)(B)(ii);
  - b. Any recommendations provided by the Department of Energy regarding whether or not to grant small refinery exemptions; and



- c. Any scorecards, analysis sheets, or other documents evaluating small refinery exemption requests, or providing any portion of the basis on which such requests are evaluated.
7. Any reports to the Secretary of Energy or the Committee on Appropriations contemplated by Senate Report 114-281 or section 4 of Public Law 115-31.<sup>4</sup>
8. Any records submitted by or on behalf of any small refinery in support of a petition for a small refinery exemption for the 2016, 2017, 2018, and/or 2019 RVOs.
9. Any records relating to or memorializing meetings with any small refineries (or agents of small refineries) relating to (a) small refinery exemption petitions for the 2016, 2017, 2018, and/or 2019 RVOs, or (b) EPA policy, guidance, or interpretations regarding small refinery exemptions.
10. A complete, unredacted copy of the administrative record and of the briefs filed by the Department of Justice on behalf of EPA in *Ergon-West Virginia, Inc. v. EPA*, No. 17-1839, a small refinery litigation matter. EPA's brief, filed on October 30, 2017, is almost entirely redacted, leaving the public uninformed about EPA's current litigating position relating to small refinery exemptions.

In addition, I request that you forward all documents responsive to any other FOIA requests submitted to EPA after January 1, 2018 relating to small refinery exemptions under the RFS program.<sup>5</sup>

To the extent that you determine that any portion of a record subject to this request will not be disclosed because it meets any of the criteria in the FOIA for nondisclosure, you are requested to identify such documents in accordance with *Vaughn v. Rosen*, 484 F.2d 820, 826-28 (D.C. Cir. 1973), and to segregate and produce any non-exempt portion.

I request such records from EPA Headquarters and any EPA region with relevant records. I request that EPA provide responsive records on a rolling basis. The cut-off date for this request is the date(s) on which EPA conducts its search(es) for responsive records. The start date for this request is January 1, 2016.

I do not wish to inspect such records prior to receiving a copy. Please provide a copy of such records, preferably in electronic form (i.e., via email or burned to a CD-ROM or DVD), which may be delivered to me at the address on the first page of this request.

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<sup>4</sup> The Conference Report provides that "[w]hen making decisions about small refinery exemptions under the RFS program, the Agency is directed to follow DOE's recommendations which are to be based on the original 2011 Small Refinery Exemption Study prepared for Congress and the conference report to division D of the Consolidated Appropriations Act of 2016. Should the Administrator disagree with a waiver recommendation from the Secretary of Energy, either to approve or deny, the Agency shall provide a report to the Committee on Appropriations and to the Secretary of Energy that explains the Agency position. Such report shall be provided 10 days prior to issuing a decision on a waiver petition." The Conference Report does not suggest that any such report would not be subject to release under FOIA.

<sup>5</sup> Such requests include, without limitation, No. EPA-HQ-2018-007467, No. 2018-006766, No. 2018-006684, No. 2018-006472, No. 2018-006463, No. 2018-006398, No. 2018-006291, and No. 2018-006111.



I agree to pay for search, duplication, and review costs in connection with this request, up to the amount of \$2,500. If you anticipate that the total costs will exceed this amount, please contact me before proceeding and provide an estimate of the total costs.

I appreciate your assistance and prompt response to this request. Please do not hesitate to contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Felipe Mendoza".

Felipe Mendoza  
Counsel – U.S. Downstream